THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.26122 of 1999

Dated: 7th December, 2005

Between:

P.C.S.Gupta.

…..PETITIONER

AND

Vice Chairman & M.D., APSRTC, RTC
Cross Roads, Hyderabad.
& 3 others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE
N.V.RAMANA

W.P.No.26122 of 1999

ORDER:

Assailing the proceedings No.POA/20A (51)/99-RM 'C' dated 09-07-1999 of the 2nd respondent/Regional manager, A.P.S.R.T.C, Cuddapah Region, Cuddapah denying continuity of service, back-wages and increments to the petitioner, while appointing him as Conductor afresh, the petitioner herein filed this writ petition.

The facts in brief are the petitioner on 2-4-1998, while conducting the Vehicle No.2213 on the route Cuddapah-Vondimitta (Rachapalli), a check took place at stage No.7 i.e., Kanumaloopalli and some irregularities in issuing the ticket were found. Subsequently, petitioner was issued suspension order and charge sheet vide proceedings APSRTC No.02/95 (55)/98-CDP dated 17-4-98. Pursuant to the charge-sheet enquiry was conducted by the Chief Inspector (E) Regional Manager's Office and show-cause notice of removal was issued to the petitioner on
26-10-1998 in proceedings No.02/95 (55)/98-CDP for which the petitioner submitted explanation. Not being satisfied with the explanation given by the petitioner, the 4th respondent vide proceedings APSRTC No. 02/95 (55)/98-CDP dated 16-12-98 removed the petitioner from service with immediate effect besides treating the suspension period as 'Not on duty' against which petitioner filed appeal to the 3rd respondent which was also rejected vide proceedings No.St/208 (33)/99-RM 'C'. Petitioner filed review before the 2nd respondent against the order of the
4th respondent dated 16-12-1998 and the 2nd respondent modified the order of the 4th respondent and ordered appointment of the petitioner

afresh as Conductor Gr-II denying all other benefits. Hence, the writ petition.

Learned counsel for the petitioner submitted that when respondent No.2-Reviewing Authority came to a conclusion that the petitioner is entitled for reinstatement, automatically he is eligible for the back wages as well as the continuity of service and that the order of respondent No.2 in so far as denying the back wages and continuity of service is disproportionate to the proved misconduct. He, thus, prayed to set aside the order passed by respondent No.2 in so far as denying the back wages and continuity of service and allow the writ petition.

On the other hand, learned Standing Counsel for the respondent-Corporation contended that the punishment imposed against the petitioner is not disproportionate to the proved misconduct. Given the misconduct, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, and respondent No.2-Reviewing Authority, on re-appreciation of the entire material on record and holding that the punishment of removal of the petitioner from service is not in proportion to the charges proved, modified the punishment and directed the respondent-Corporation to reinstate the petitioner into service as Conductor, but denied the back-wages and continuity of service, and no interference is called for therewith.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-Corporation and perused the material on record.

As can be seen from the record, the petitioner did not allege any procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted on three counts, namely (1) for having violated the rule “issue and start”, (2) for having re-issued Ticket No.080/953750 of Rs.3/- denomination, which was already issued on 12.03.1998, and (3) for having closed the tray numbers of all denominations up to Stage No.7 without issuing the correct ticket to the passenger. In the departmental enquiry, the Enquiry Officer, on consideration of the statements of the Officials as well as the petitioner and respective

passenger held that the charges leveled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The reviewing authority, on re-appreciation of the entire material on record, though found that charges are proved against the petitioner, while observing that the punishment of removal of the petitioner from service is disproportionate to the charges proved, ordered reinstatement of the petitioner into service without back wages and without continuity of service. Had the reviewing authority held that the charges leveled against the petitioner are not proved, then the petitioner would have been justified in contending that he should be awarded continuity of service and backwages, but that is not the case. The reviewing authority, having held that the charges leveled against the petitioner are proved, has taken a lenient view and ordered fresh appointment. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (see **U.P. State Brassware Corpn.Ltd. v. Uday Narain Pandey**[1]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the reviewing authority on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority has passed orders in violation of the principles of natural justice. But the reviewing authority has set aside the order of removal passed by the disciplinary authority, as confirmed by the appellate authority, and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct.

In **Karnataka Bank Ltd. V. A.L. Mohan Rao**[2], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the

appellate authority, was set aside by the reviewing authority, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

(N.V. RAMANA, J.)

Date:7th December, 2005.

GRK

1 (2006) 1 SCC 479

2 (2006) 1 SCC 63